

§ 18.94

than 10 days after service of the decision on the moving party.

§ 18.94 Indicative ruling on a motion for relief that is barred by a pending petition for review.

(a) *Relief pending review.* If a timely motion is made for relief that the judge lacks authority to grant because a petition for review has been docketed and is pending, the judge may:

- (1) Defer considering the motion;
- (2) Deny the motion; or

(3) State either that the judge would grant the motion if the reviewing body remands for that purpose or that the motion raises a substantial issue.

(b) *Notice to reviewing body.* The movant must promptly notify the clerk of the reviewing body if the judge states that he or she would grant the motion or that the motion raises a substantial issue.

(c) *Remand.* The judge may decide the motion if the reviewing body remands for that purpose.

§ 18.95 Review of decision.

The statute or regulation that conferred hearing jurisdiction provides the procedure for review of a judge's decision. If the statute or regulation does not provide a procedure, the judge's decision becomes the Secretary's final administrative decision.

Subpart B—Rules of Evidence

SOURCE: 55 FR 13219, Apr. 9, 1990, unless otherwise noted.

GENERAL PROVISIONS

§ 18.101 Scope.

These rules govern formal adversarial adjudications of the United States Department of Labor conducted before a presiding officer.

(a) Which are required by Act of Congress to be determined on the record after opportunity for an administrative agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, or

(b) Which by United States Department of Labor regulation are conducted in conformance with the foregoing provisions, to the extent and with the exceptions stated in § 18.1101.

29 CFR Subtitle A (7–1–16 Edition)

Presiding officer, referred to in these rules as *the judge*, means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence at a hearing in such an adjudication.

§ 18.102 Purpose and construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

§ 18.103 Rulings on evidence.

(a) *Effect of erroneous ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked. A substantial right of the party is affected unless it is more probably true than not true that the error did not materially contribute to the decision or order of the judge. Properly objected to evidence admitted in error does not affect a substantial right if explicitly not relied upon by the judge in support of the decision or order.

(b) *Record of offer and ruling.* The judge may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The judge may direct the making of an offer in question and answer form.

(c) *Plain error.* Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the judge.

§ 18.104 Preliminary questions.

(a) *Questions of admissibility generally.* Preliminary questions concerning the